

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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Chapter 11

In re:

733 PROSPECT REALTY SERVICE CORP.,  
Debtor.

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Case No. 17-10957 (MKV)

## **DEBTOR'S DISCLOSURE STATEMENT**

### I. INTRODUCTION

This is the disclosure statement ("Disclosure Statement") in the Chapter 11 case of 733 PROSPECT REALTY SERVICE CORP. ("Debtor"). This Disclosure Statement contains information about the Debtor and describes the Debtor's Plan ("Plan") dated March 26, 2018. A full copy of the Plan is attached to this Disclosure Statement as Exhibit A. ***Your rights may be affected. You should read the Plan and this Disclosure Statement carefully and discuss them with your attorney. If you do not have an attorney, you may wish to consult one.***

The proposed distributions under the Plan are discussed at pages 6 - 7 of this Disclosure Statement. **General unsecured creditors are classified in Class 3, and will receive a distribution of 100 % of their allowed claims, to be distributed at the title closing in the sale of Debtor's real property.**

#### A. Purpose of This Document

This Disclosure Statement describes:

- The Debtor and significant events during the bankruptcy case,
- How the Plan proposes to treat claims or equity interests of the type you hold (i.e., what you will receive on your claim or equity interest if the plan is confirmed),
- Who can vote on or object to the Plan,
- What factors the Bankruptcy Court (the "Court") will consider when deciding whether to confirm the Plan,
- Why Debtor believes the Plan is feasible, and how the treatment of your claim or equity interest under the Plan compares to what you would receive on your claim or equity interest in liquidation, and
- The effect of confirmation of the Plan.

Be sure to read the Plan as well as the Disclosure Statement. This

Disclosure Statement describes the Plan, but it is the Plan itself that will, if confirmed, establish your rights.

B. Deadlines for Voting and Objecting; Date of Plan Confirmation Hearing

The Court has not yet confirmed the Plan described in this Disclosure Statement. This section describes the procedures pursuant to which the Plan will or will not be confirmed.

1. *Time and Place of the Hearing to Finally Approve This Disclosure Statement and Confirm the Plan*

The hearing at which the Court will determine whether to finally approve this Disclosure Statement and confirm the Plan will take place before the Honorable Mary Kay Vyskocil, United States Bankruptcy Judge, at the United States Bankruptcy Courthouse, One Bowling Green, Courtroom 501, New York, NY 10004-1408, on \_\_\_\_\_, 2018 at \_\_\_\_\_, or as soon thereafter as counsel can be heard.

2. *Deadline For Voting to Accept or Reject the Plan*

If you are entitled to vote to accept or reject the plan, vote on the enclosed ballot and return the ballot in the enclosed envelope to Albert H. Barkey, Esq., 277 Broadway, Suite 408, New York, NY 10007. See section IV. A. below for a discussion of voting eligibility requirements.

Your ballot must be received by \_\_\_\_\_, **2018** or it will not be counted.

3. *Deadline For Objecting to the Adequacy of Disclosure and Confirmation of the Plan*

Objections to this Disclosure Statement or to the confirmation of the Plan must be filed with the Court and served upon all parties in interest by \_\_\_\_\_, **2018**.

4. *Identity of Person to Contact for More Information*

If you want additional information about the Plan, you should contact Albert H. Barkey, 277 Broadway, Suite 408, New York, NY 10007; telephone: 646-410-1818; email: ahboffice@yahoo.com.

C. **Disclaimer**

**The Court has not approved this Disclosure Statement as containing adequate information to enable parties affected by the Plan to make an informed judgment about its terms. And the Court has not yet determined whether the Plan meets the legal requirements for confirmation.**

II. BACKGROUND

A. Description and History of Debtor's Business

The Debtor is a New York corporation that owns a single real-estate asset that is known as 733 Prospect Avenue, Bronx, NY 10455 ("Premises"). The Premises is an apartment building with 17 residential apartments. But for its books and records, Debtor's sole asset is its Premises valued at \$2,400,000 as per the contract for its sale.

B. Insiders of the Debtor

Since the commencement of this chapter 11 case, Debtor's sole paid manager is Jose E. Suarez, Vice President of the Debtor. He has been providing management and bookkeeping services since 2012, when Debtor acquired the Premises. He has received \$500 per week in compensation from Debtor during the two years prior to the commencement of the Debtor's bankruptcy case, and he continues to be so paid during the pendency of this chapter 11 case. Maria Lopez Perez is the President of the Debtor and owns 200 shares of common stock of the Debtor; Daniel Torres is Secretary and Treasurer of the Debtor. They have received no payment since the commencement of this chapter 11 case.

C. Management of the Debtor Before and During the Bankruptcy

During the two years prior to the date on which the bankruptcy petition was filed, the officers, directors, managers or other persons in control of the Debtor were Maria Lopez Perez, President and shareholder; Jose E. Suarez, Vice President and manager, and Daniel Torres, Secretary and Treasurer. And likewise during the Debtor's Chapter 11 case and after the effective date of the order confirming the Plan until the title closing on the sale of the Premises.

D. Events Leading to Chapter 11 Filing

At the time Debtor acquired the Premises, the Premises needed substantial renovation work, to include correcting building violations. And the Premises had

significant tax debts to New York City. The unpaid taxes to New York City grew because of accrued interest, and these tax liens were sold by New York City to third parties. And one purchaser, NYCTL 1998-2 Trust/MTAG, of a N.Y.C. tax lien commenced a tax foreclosure action against the Premises in the New York Supreme Court, Bronx County. Debtor was seeking both a refinancing and a buyer for the Premises so as to pay off the liens. However, a foreclosure auction of the Premises was scheduled before Debtor was able to do so.

E. Significant Events During the Bankruptcy Case

During the bankruptcy case the automatic stay was vacated in connection with the NYCTL 1998-2 Trust foreclosure action and a new foreclosure auction is imminent. However, Debtor has negotiated a contract to sell its Premises for \$2,400,000 — and its title closing will pay all claims in full. The executed contract is attached to and incorporated by reference in the Plan.

F. Projected Recovery of Avoidable Transfers

There are no preference, fraudulent conveyance, or other avoidance actions for Debtor to pursue.

G. Claims Objections

Except to the extent that a claim is already allowed pursuant to a final non-appealable order, the Debtor reserves the right to object to claims. Therefore, even if your claim is allowed for voting purposes, you may not be entitled to a distribution if an objection to your claim is later upheld. The procedures for resolving disputed claims are set forth in Article V of the Plan.

H. Current and Historical Financial Conditions

But for its books and records, Debtor's sole asset is its Premises valued at \$2,400,000 by the executory contract of sale. Because of its mortgage arrears and the accruing interest on its secured tax debt, Debtor does not have ongoing income to fund a realistic Plan. **Debtor will be able to pay all claims in full from the proceeds from the sale of its Premises.**

III. SUMMARY OF THE PLAN OF REORGANIZATION AND TREATMENT OF CLAIMS AND EQUITY INTERESTS

A. What is the Purpose of the Plan of Reorganization?

As required by the Code, the Plan places claims and equity interests in various classes and describes the treatment each class will receive. The Plan also states whether each class of claims or equity interests is impaired or unimpaired. If the Plan is confirmed, your recovery will be limited to the amount provided by the Plan.

B. Unclassified Claims

Certain types of claims are automatically entitled to specific treatment under the Bankruptcy Code ("Code"). They are not considered impaired, and holders of such claims do not vote on the Plan. They may, however, object if, in their view, their treatment under the Plan does not comply with that required by the Code. As such, the Plan Proponent has not placed the following claims in any class:

1. *Administrative Expenses*

Administrative expenses are costs or expenses of administering the Debtor's chapter 11 case which are allowed under § 507(a)(2) of the Code. Administrative expenses also include the value of any goods sold to the Debtor in the ordinary course of business and received within 20 days before the date of the bankruptcy petition. The Code requires that all administrative expenses be paid on the effective date of the Plan, unless a particular claimant agrees to a different treatment.

The following lists the Debtor's estimated administrative expenses, and their proposed treatment under the Plan: U.S. Trustee fees shall be paid in full as they become due. Debtor's tax liabilities shall be paid in full at the closing in the sale of the Premises. Debtor's attorney's fees shall be paid in full after the closing in the sale of the Premises.

2. *Priority Tax Claims*

Priority tax claims are unsecured income, employment, and other taxes described by § 507(a)(8) of the Code. Unless the holder of such a § 507(a)(8) priority tax claim agrees otherwise, it must receive the present value of such claim, in regular installments paid over a period not exceeding 5 years from the order of relief.

The following lists the Debtor's estimated § 507(a)(8) priority tax claims and their proposed treatment under the Plan:

- Internal Revenue Service: \$6,723.38
- NYS Dept. of Taxation & Finance \$1,145.00
- NYS Dept. of Labor: \$ 34.20

**These claims shall be paid in full at the title closing in the sale of the Premises.**

C. Classes of Claims and Equity Interests

The following are the classes set forth in the Plan, and the proposed treatment that they will receive under the Plan:

1. *Classes of Secured Claims*

Allowed Secured Claims are claims secured by property of the Debtor's bankruptcy estate (or that are subject to setoff) to the extent allowed as secured claims under § 506 of the Code. If the value of the collateral or setoffs securing the creditor's claim is less than the amount of the creditor's allowed claim, the deficiency will be classified as a general unsecured claim.

The following lists all classes containing Debtor's secured prepetition claims and their proposed treatment under the Plan:

Class 2.

- NYC Dept. of Finance: \$132,373.60
- NYC Water Board: \$ 43,886.25
- NYC Dept. of HPD: \$668,525.80
- NYC OATH: \$ 1,204.78
- NYCTL 1998-2/MTAG: \$112,743.97
- NYCTL 1998-2/MTAG: \$114,687.96

**These claims shall be paid in full at the title closing in the sale of the Premises.**

2. *Classes of Priority Unsecured Claims*

Certain priority claims that are referred to in §§ 507(a)(1), (4), (5), (6), and (7) of the Code are required to be placed in classes. The Code requires that each holder of such a claim receive cash on the effective date of the Plan equal to the allowed amount of such claim. However, a class of holders of such claims may vote to accept different treatment.

The following lists all classes containing claims under §§ 507(a)(1), (4), (5), (6), and (a)(7) of the Code and their proposed treatment under the Plan:

Class 1. None.

3. *Class of General Unsecured Claims*

General unsecured claims are not secured by property of the estate and are not entitled to priority under § 507(a) of the Code.

The following identifies the Plan's proposed treatment of the sole class of general unsecured claims against the Debtor:

Class 3.

- Consolidated Edison Co. of NY: \$ 249.85
- Internal Revenue Service: \$1,783.21

These claims shall be paid in full at the title closing in the sale of the Premises.

4. *Class of Equity Interest Holders*

Equity interest holders are parties who hold an ownership interest (i.e., equity interest) in the Debtor. In a corporation, entities holding preferred or common stock are equity interest holders. In a partnership, equity interest holders include both general and limited partners. In a limited liability company ("LLC"), the equity interest holders are the members. Finally, with respect to an individual who is a debtor, the Debtor is the equity interest holder.

The following sets forth the Plan's proposed treatment of the sole class of equity interest holders:

Class 4. Shareholder(s) retains full stock ownership in the Debtor.

D. Means of Implementing the Plan

1. *Source of Payments*

Payments and distributions under the Plan will be funded by the sale of the Premises.

2. *Post-confirmation Management*

The post-confirmation managers of the Debtor, and their compensation, shall be as follows: Jose E. Suarez, Vice President of the Debtor, shall continue to receive \$500 per week in compensation until the title closing in the sale of the Premises.

E. Risk Factors

The Plan has the following risks: None. Debtor's contract of sale of the Premises for \$2,400,000 is an "all cash" transaction by purchaser so the title closing is not dependent on purchaser securing outside (third-party) financing. And the title closing will be scheduled forthwith upon confirmation of the Plan.

F. Executory Contracts and Unexpired Leases

The attached Plan lists all executory contracts and unexpired leases that the Debtor will assume under the Plan. Assumption means that the Debtor has elected to continue to perform the obligations under such contracts and unexpired leases, and to cure defaults of the type that must be cured under the Code, if any.

If you object to the assumption of your unexpired lease or executory contract, the proposed cure of any defaults, or the adequacy of assurance of performance, you must file and serve your objection to the Plan within the deadline for objecting to the confirmation of the Plan, unless the Court has set an earlier time.

All executory contracts and unexpired leases that are not listed as assumed will be rejected under the Plan. Consult your adviser or attorney for more specific information about particular contracts or leases.

If you object to the rejection of your contract or lease, you must file and serve your objection to the Plan within the deadline for objecting to the confirmation of the Plan.

The Deadline for Filing a Proof of Claim Based on a Claim Arising from the Rejection of a Lease or Contract is no later than sixty (60 ) days after the date of the order confirming the Plan. Any claim based on the rejection of a contract or lease will be barred if the proof of claim is not timely filed, unless the Court orders otherwise.



#### IV. CONFIRMATION REQUIREMENTS AND PROCEDURES

To be confirmable, the Plan must meet the requirements listed in §§ 1129(a) or (b) of the Code. These include the requirements that: the Plan must be proposed in good faith; at least one impaired class of claims must accept the plan, without counting votes of insiders; the Plan must distribute to each creditor and equity interest holder at least as much as the creditor or equity interest holder would receive in a chapter 7 liquidation case, unless the creditor or equity interest holder votes to accept the Plan; and the Plan must be feasible. These requirements are not the only requirements listed in § 1129, and they are not the only requirements for confirmation.

##### A. Who May Vote or Object

Any party in interest may object to the confirmation of the Plan if the party believes that the requirements for confirmation are not met.

Many parties in interest, however, are not entitled to vote to accept or reject the Plan. A creditor or equity interest holder has a right to vote for or against the Plan only if that creditor or equity interest holder has a claim or equity interest that is both (1) allowed or allowed for voting purposes and (2) impaired.

**In this case, the Debtor believes that no classes are impaired: Debtor believes that all classes are unimpaired and that holders of claims in each of these classes, therefore, do not have the right to vote to accept or reject the Plan.**

##### 1. *What Is an Allowed Claim or an Allowed Equity Interest?*

Only a creditor or equity interest holder with an allowed claim or an allowed equity interest has the right to vote on the Plan. Generally, a claim or equity interest is allowed if either (1) the Debtor has scheduled the claim on the Debtor's schedules, unless the claim has been scheduled as disputed, contingent, or unliquidated, or (2) the creditor has filed a proof of claim or equity interest, unless an objection has been filed to such proof of claim or equity interest. When a claim or equity interest is not allowed, the creditor or equity interest holder holding the claim or equity interest cannot vote unless the Court, after notice and hearing, either overrules the objection or allows the claim or equity interest for voting purposes pursuant to Rule 3018(a) of the Federal Rules of Bankruptcy Procedure.

**The deadline for filing a proof of claim in this case was:** October 31, 2017 for each person or nongovernmental entity (including individuals,

partnerships, corporations, joint ventures, and trusts) and October 31, 2017 for each governmental entity or unit.

2. *What Is an Impaired Claim or Impaired Equity Interest?*

As noted above, the holder of an allowed claim or equity interest has the right to vote only if it is in a class that is impaired under the Plan. As provided in § 1124 of the Code, a class is considered impaired if the Plan alters the legal, equitable, or contractual rights of the members of that class.

3. *Who is Not Entitled to Vote*

The holders of the following five types of claims and equity interests are not entitled to vote:

- holders of claims and equity interests that have been disallowed by an order of the Court;
- holders of other claims or equity interests that are not "allowed claims" or "allowed equity interests" (as discussed above), unless they have been "allowed" for voting purposes;
- holders of claims or equity interests in unimpaired classes;
- holders of claims entitled to priority pursuant to §§ 507(a)(2), (a)(3), and (a)(8) of the Code;
- holders of claims or equity interests in classes that do not receive or retain any value under the Plan; and
- administrative expenses.

**Even If You Are Not Entitled to Vote on the Plan, You Have a Right to Object to the Confirmation of the Plan and to the Adequacy of the Disclosure Statement.**

4. *Who Can Vote in More Than One Class*

A creditor whose claim has been allowed in part as a secured claim and in part as an unsecured claim, or who otherwise hold claims in multiple classes, is entitled to accept or reject a Plan in each capacity, and should cast one ballot for each claim.

B. Votes Necessary to Confirm the Plan

If impaired classes exist, the Court cannot confirm the Plan unless (1) at least one impaired class of creditors has accepted the Plan without counting the votes of any insiders within that class, and (2) all impaired classes have voted to

accept the Plan, unless the Plan is eligible to be confirmed by "cram down" on non-accepting classes, as discussed later in Section B.2.

1. *Votes Necessary for a Class to Accept the Plan*

A class of claims accepts the Plan if both of the following occur: (1) the holders of more than one-half (1/2) of the allowed claims in the class, who vote, cast their votes to accept the Plan, and (2) the holders of at least two-thirds (2/3) in dollar amount of the allowed claims in the class, who vote, cast their votes to accept the Plan.

A class of equity interests accepts the Plan if the holders of at least two-thirds (2/3) in amount of the allowed equity interests in the class, who vote, cast their votes to accept the Plan.

2. *Treatment of Nonaccepting Classes*

Even if one or more impaired classes reject the Plan, the Court may nonetheless confirm the Plan if the nonaccepting classes are treated in the manner prescribed by § 1129(b) of the Code. A plan that binds nonaccepting classes is commonly referred to as a "cram down" plan. The Code allows the Plan to bind nonaccepting classes of claims or equity interests if it meets all the requirements for consensual confirmation except the voting requirements of § 1129(a)(8) of the Code, does not "discriminate unfairly," and is "fair and equitable" toward each impaired class that has not voted to accept the Plan.

**You should consult your own attorney if a “cramdown” confirmation will affect your claim or equity interest, as the variations on this general rule are numerous and complex.**

C. Liquidation Analysis

To confirm the Plan, the Court must find that all creditors and equity interest holders who do not accept the Plan will receive at least as much under the Plan as such claim and equity interest holders would receive in a chapter 7 liquidation. The market value of the Premises has been determined by the willingness of a purchaser to contract for its purchase.

D. Feasibility

The Court must find that confirmation of the Plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the Debtor

or any successor to the Debtor, unless such liquidation or reorganization is proposed in the Plan.

1. *Ability to Initially Fund Plan*

All claims and expenses will be paid in full at the title closing in the sale of the Premises for \$2,400,000.

2. *Ability to Make Future Plan Payments And Operate Without Further Reorganization*

Debtor does not have income to fund a Chapter 11 Plan without the sale of its Premises. However, all claims and expenses will be paid in full at the title closing in the sale of the Premises for \$2,400,000.

V. EFFECT OF CONFIRMATION OF PLAN

A. NO DISCHARGE OF DEBTOR

In accordance with § 1141(d)(3) of the Code, the Debtor will not receive any discharge of debt in this bankruptcy case.

B. Modification of Plan

The Debtor may modify the Plan at any time before confirmation of the Plan. However, the Court may require a new disclosure statement and/or revoting on the Plan. The Debtor may also seek to modify the Plan at any time after confirmation only if (1) the Plan has not been substantially consummated and (2) the Court authorizes the proposed modifications after notice and a hearing.

C. Final Decree

Once the estate has been fully administered, as provided in Rule 3022 of the Federal Rules of Bankruptcy Procedure, the Debtor, or such other party as the Court shall designate in the Plan Confirmation Order, shall file a motion with the Court to obtain a final decree to close the case. Alternatively, the Court may enter such a final decree on its own motion.

VI. OTHER PLAN PROVISIONS

The Debtor shall have a ten day grace period to make any payment required under the Plan. Partial pre-payments by the Debtor shall be applied against the

payments in the inverse order of their due date. And the Court shall retain exclusive jurisdiction for the following purposes:

- (a) to determine all objections to Claims;
- (b) to permit amendments to Schedules;
- (c) to determine all Administrative Claims including, without limitation, applications for the allowance of compensation and reimbursement of expenses, provided that applications for allowance of compensation and reimbursement of expenses shall be filed within 180 days after the effective date of the Plan;
- (d) to estimate all Disputed Claims;
- (e) to determine all applications and adversary proceedings pending on the effective date of the Plan or filed or commenced within 180 days thereafter;
- (f) to determine all disputes concerning the interpretation of the Plan and to correct any defect, cure any omission, reconcile any inconsistency in the Plan;
- (g) to enforce any orders, including the Confirmation Order, entered in connection with Debtor's Chapter 11 case.
- (h) to enter such orders as may be necessary or appropriate in aid of confirmation and to facilitate the Plan, including full and continuing jurisdiction over the postpetition contract for the sale of Debtor's Premises and any disputes, issues, and matters relating thereto;
- (i) to modify the Plan to the full extent permitted by the Code;
- (j) to determine such other matters as may be provided for in the Confirmation Order; and
- (k) to enter a Final Order closing Debtor's Chapter 11 case.

Dated: New York, New York  
March 26, 2018

Respectfully submitted,

733 Prospect Realty Service Corp.

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Maria Lopez Perez, President

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